



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 24, 2018

Mark S. Manion
Price Postel & Parma LLP
200 E. Carrillo Street, Suite 100
Santa Barbara, CA 93101

Re: Your Request for Advice
Our File No. I-18-129

Dear Mr. Manion:

This letter responds to your request for advice on behalf of the Montecito Fire Protection District regarding the conflict-of-interest and gift provisions of the Political Reform Act (the "Act").¹ Please note that we are only providing advice under the conflict-of-interest provisions of the Act and not under other general conflict-of-interest prohibitions such as common law conflict of interest or Section 1090. Please also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

Because your request is general in nature, we are treating it as one for informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

- (1) Do the Act's conflict-of-interest provisions apply to an employee of a fire protection district, including a firefighter, whose position is neither enumerated in Section 87200 nor designated in the district's conflict-of-interest code?
- (2) Do the Act's gift provisions prohibit or limit cash payments to an employee of a fire protection district, including a firefighter, whose position is neither enumerated in Section 87200 nor designated in the district's conflict-of-interest code?
- (3) Do the Act's gift provisions permit a public official or a designated employee of a fire protection district to avoid acceptance or receipt of a gift by donating it to a state or local government agency?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

- (4) May an official enumerated in Section 87200 or designated in a conflict-of-interest code accept a gift that is a “personal gift of the heart” following a devastating community disaster if the donor has no pending or anticipated business before the agency at issue that could suggest an attempt to influence agency decisions?

CONCLUSIONS

- (1) An agency employee whose position is not enumerated in Section 87200 and who does not make or participate in making of decisions that may have a foreseeable, material effect on any financial interest is not subject to the Act’s conflict-of-interest provisions. However, if an agency employee makes or participates in the making of a decision that may have foreseeable, material effect on any financial interest, even if the employee’s position is not enumerated in Section 87200 or designated in the district’s conflict-of-interest code, the Act’s conflict-of-interest provisions would apply to that employee.
- (2) No. The Act’s gift provisions do not prohibit or limit those cash payments to that employee.
- (3) Yes. The Act’s gift provisions permit a public official or designated employee to avoid acceptance or receipt of a gift by donating it to a state or local government agency within 30 days of its delivery pursuant to Regulation 18941(c)(2). However, if that payment is donated to the official’s own agency, any use of the payment by an agency official must meet the requirements of Regulation 18944(c) to avoid being a gift or income to that official.
- (4) No. The Act expressly limits the provision of gifts to an official who serves in a decision-making capacity to prevent improper influences on the decision-making process. There is no exception for gifts given in appreciation of the provision of disaster-response services.

FACTS AS PRESENTED BY REQUESTOR

You are the authorized representative of the Montecito Fire Protection District. Montecito is an unincorporated community located in the County of Santa Barbara. The District provides fire protection services to the community.

On May 31, 2018, a prominent Montecito resident and community member invited all officers and employees of the District to lunch at a local restaurant as a “thank you” for their service to the community during the Thomas Fire in December 2017 and the devastating mudslides and debris flows that followed in January 2018. In addition to purchasing their meals (estimated to be valued at less than \$20 per attendee), the resident presented each officer and employee with a gift basket containing, among other things, a check for a substantial amount of money. Some of the gift-basket recipients were public officials or designated employees, and others were rank-and-file, non-designated employees. You note that the approximate value of each gift basket, apart from the enclosed check, was less than \$50. The value of each check varied from recipient to recipient, but some checks were for \$10,000 or more.

The Montecito resident that presented these payments to the District’s officers and employees is a long-time home owner in the community who has made generous anonymous donations to the District in the past. This Montecito resident has no pending business before the

District, and the resident's property was only superficially damaged in the mudslides. The payments were presented with heartfelt thanks for the service of each individual District officer or employee to the community during the disasters.

ANALYSIS

The Act's Conflict-of-Interest Provisions

Pursuant to Section 87302 of the Act, a state or local government agency's conflict-of-interest code enumerates the positions within the agency, other than those specified in Section 87200, that involve making or participating in making decisions that may foreseeably have a material effect on any financial interest. An individual designated in an agency's conflict-of-interest code is a "designated employee," a term that includes any "officer, employee, member, or consultant" of the agency whose position involves making or participating in making in those decisions. (Section 82019(a)(3).)

You have asked whether an employee of a fire protection district, including a firefighter, whose position is not designated in the district's conflict-of-interest code is subject to the Act's conflict-of-interest provisions.

The Act's conflict-of-interest provisions prohibit a public official from making, participating in making, or attempting to influence a governmental decision if that decision will have a reasonably foreseeable material financial effect on one or more of the official's financial interests. (Sections 87100 and 87103.)

An agency employee whose position is not enumerated in Section 87200 and who does not make or participate in making decisions that may have a foreseeable, material effect on any financial interest is not subject to the Act's conflict-of-interest provisions. (See Sections 82019(a)(3) and 87302(a).) However, if that agency employee takes part in a decision that may have a reasonably foreseeable material financial effect on any financial interest, even on a one-time basis, the Act's conflict-of-interest provisions would apply to that employee. (*Siddiqui* Advice Letter, No. A-14-020.)

Therefore, even when a public official has not been designated in his or her agency's conflict-of-interest code, that official has a financial interest in the donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$470 or more in value provided to, received by, or promised to the official in the 12 months prior to the decision at issue. (Section 87103(e); Regulation 18940.2.) Additionally, the Act would prohibit an official who has an interest in a donor, intermediary, or agent of a qualifying gift or gifts from making, participating in making, or attempting to influence a decision if that decision would have a reasonably foreseeable material financial effect on that interest. (Sections 87100 and 87103.)

The Act's Gift Provisions

You have also asked whether an agency employee whose position is not specified in Section 87200 and is not designated in the agency's conflict-of-interest code is subject to the Act's gift provisions.

For each enumerated position in an agency's conflict-of-interest code, other than those specified in Section 87200, the code must identify the specific types of investments, business positions, interests in real property, and sources of income which are reportable. (Section 87302(a).) If the code requires that a designated employee report income on his or her statement of economic interests, the employee must report income aggregating \$500 or more in value, or \$50 or more in value if the income was a gift, and a general description of each source's business activity if any. (Section 87207(a)(1).) Additionally, a designated employee may not accept gifts from a single source in a calendar year in excess of the current \$470 gift limit if the employee is required to report the receipt of gifts from that source on his or her statement of economic interests. (Section 89503(c); Regulation 18940.2.)

However, if an agency employee's position is neither specified in Section 87200 nor designated in the agency's conflict-of-interest code, that employee has no disclosure responsibilities under the Act. (*Siddiqui* Advice Letter, *supra*.) Furthermore, if an agency employee whose position is neither specified in Section 87200 nor designated in the agency's conflict-of-interest code receives a cash payment from a source that is not reportable income or a reportable gift, that payment is not a prohibited gift under the Act. (*Hamlat* Advice Letter, No. A-09-236.) Therefore, a district employee whose position is neither enumerated in Section 87200 nor designated in the district's conflict-of-interest code is not subject to the Act's gift provisions.

Receipt or Acceptance of a Gift

You have also asked whether the Act permits a public official or a designated employee of a fire protection district to avoid acceptance or receipt of a gift by donating it to a state or local government agency.

Regulation 18941(c) sets forth the Act's general rule for return, donation, or reimbursement of a gift. Pursuant to Regulation 18941(c)(2), an official neither accepts nor receives a gift if the official donates the unused gift within 30 days to "a state, local, or federal government agency, without being claimed as a deduction for tax purposes."

However, if that payment, which would otherwise be a gift, is donated to the official's own agency, any use of the payment by an official of that agency must meet the requirements of Regulation 18944(c) to avoid being a gift or income to the official who receives the use of the payment. Under Regulation 18944(c), a payment to an agency that is used by an agency official is a gift or income to that official unless the payment is used for official agency business, controlled by the agency head, and properly reported, as specified. Accordingly, we note that if the payment is donated to the official's own agency under Regulation 18941(c), any agency official's use of the payment is subject to Regulation 18944(c).

Gift Exceptions

Finally, you have asked whether the Fair Political Practices Commission would consider creating an exception to the Act's gift limit for a gift or gifts that are "personal gifts of the heart" following a devastating community disaster when the donor has no pending or anticipated business before the agency at issue that could suggest an attempt to influence agency decisions.

As noted above, gifts to officials who serve in a decision-making capacity are expressly limited by the Act to prevent improper influences on the decision-making process. In regard to gifts given in appreciation of the provision of disaster-response services, even to the extent that a donor has no pending or anticipated business before the agency, an agency official's receipt of a gift or gifts beyond the gift limit could improperly influence the agency's decisions relating to the allocation of disaster-response services.

Accordingly, there is currently no exception to the Act's gift limit for gifts given in appreciation of the provision of disaster-response services.² Any exception for "personal gifts from the heart" for gifts given in appreciation of the provision of disaster-response services following a community disaster would require regulatory, if not statutory, action.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Brian G. Lau
Acting General Counsel



By: Matthew F. Christy
Counsel, Legal Division

MFC:jgl

² Exceptions for gifts prohibitions and limitations established by the Commission are found in Regulation 18942.